

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
HICKORY CAPITAL, LLC,

Plaintiff,

-against-

SME CAPITAL, LLC, STEVE FELDMAN, and,
GEORGE KING,

Defendants.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/12/2023

22 Civ. 10729 (AT)

ORDER

On March 14, 2023, the Court granted Plaintiff's attorney's motion to withdraw and gave Plaintiff until May 15, 2023, to retain new counsel. ECF No. 19. Plaintiff did not retain an attorney within that time. The Court then extended the deadline for Plaintiff to retain counsel to June 27, 2023. ECF No. 21. The Court received a letter from Plaintiff stating that it has not retained counsel and it wishes to dismiss the action. Plaintiff is an artificial entity that cannot proceed *pro se*. *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993); *see also Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983).

Under Rule 41(b) of the Federal Rules of Civil Procedure, an action may be dismissed "[i]f the plaintiff fails to prosecute or to comply with [the federal rules] or a court order." Fed. R. Civ. P. 41(b). "Rule 41(b) gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *Davis v. Town of Hempstead*, 597 F. App'x 31, 32 (2d Cir. 2015) (quotation marks and citation omitted). Plaintiff has the ultimate obligation of moving the case to trial, and "[d]ismissal is warranted where there is a lack of due diligence in the prosecution of the lawsuit by [the] plaintiff." *West v. City of New York*, 130 F.R.D. 522, 524 (S.D.N.Y. 1990).

Before dismissing a case under Rule 41(b), the district court must weigh five factors: "(1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal."

Lewis v. Frayne, 595 F. App'x 35, 36 (2d Cir. 2014) (quoting *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014) (per curiam)). "No one factor is dispositive" in determining the proper outcome, and the Court must weigh all five factors in deciding whether dismissal is appropriate. *United States ex rel. Drake v. Norden Sys.*, 375 F.3d 248, 254 (2d Cir. 2004). Dismissal under Rule 41(b) is subject to the "sound discretion of the district courts." *Tutora v. Correct Care Sols., LLC*, No. 17 Civ. 9169, 2020 WL 1164793, at *1 (S.D.N.Y. Mar. 11, 2020).

The Court concludes that dismissal is appropriate. Plaintiff has failed to prosecute this action, as evinced by its failure to retain new counsel and its expressed intent not to retain new counsel. As to docket management, “it is not an efficient use of the Court’s resources to permit this case to languish on the docket in the hope that [the plaintiff] will reappear in the future.” *Ikpemgbe v. City of New York*, No. 18 Civ. 1027, 2021 WL 4198409, at *1 (S.D.N.Y. Sept. 15, 2021) (cleaned up). Finally, Plaintiff has stated that it does not intend to pursue this action. Dismissal is appropriate where the Court “has no reason to believe that lesser sanctions would be effective.” *Watkins v. Matarazzo*, No. 13 Civ. 2477, 2015 WL 13745762, at *9 (S.D.N.Y. Sept. 22, 2015) (cleaned up).

Accordingly, Plaintiff’s complaint is DISMISSED without prejudice for failure to prosecute. The Clerk of Court is directed to terminate all pending motions, vacate all conferences, and close the case. The Clerk of Court is further directed to mail a copy of this order to Plaintiff *pro se* at 132 Central Avenue, Hillsdale, New Jersey 07642.

SO ORDERED.

Dated: June 12, 2023
New York, New York



ANALISA TORRES
United States District Judge